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NOTICE OF ALLOWANCE AND FEE(S) DUE

7590

05/22/2009

Stephen M Haracz
Bryan Cave
1290 Avenue of the Americas
New York, NY 10104-3300

EXAMINER

CHOWDHURY, IQBAL HOSSAIN

ART UNIT

PAPER NUMBER

1652

DATE MAILED: 05/22/2009

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/528,845	01/17/2006	Tatsuo Hoshino	21419 US C038435/0185660	2036
TITLE OF INVENTION: GENE ENCODING VITAMIN B6 PHOSPHATE PHOSPHATASE AND USE THEREOF				

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1510	\$300	\$0	\$1810	08/24/2009

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. **PROSECUTION ON THE MERITS IS CLOSED.** THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN **THREE MONTHS** FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. **THIS STATUTORY PERIOD CANNOT BE EXTENDED.** SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.

HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted. If an equivalent of Part B is filed, a request to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: Mail **Mail Stop ISSUE FEE**
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INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

7590 05/22/2009

Stephen M Haracz
 Bryan Cave
 1290 Avenue of the Americas
 New York, NY 10104-3300

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Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop [ISSUE FEE] address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/528,845

01/17/2006

Tatsuo Hoshino

21419 US

2036

TITLE OF INVENTION: GENE ENCODING VITAMIN B6 PHOSPHATE PHOSPHATASE AND USE THEREOF

C038435/0185660

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1510	\$300	\$0	\$1810	08/24/2009

EXAMINER	ART UNIT	CLASS-SUBCLASS
CHOWDHURY, IQBAL HOSSAIN	1652	435-196000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB-122) attached.
☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB-47; Rev 03-02 or more recent) attached. Use of a **Customer Number is required.**

2. For printing on the patent front page, list

- (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, 1 _____
 (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed. 2 _____
 3 _____

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY AND STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent): ☐ Individual ☐ Corporation or other private group entity ☐ Government

4a. The following fee(s) are submitted:

- ☐ Issue Fee
☐ Publication Fee (No small entity discount permitted)
☐ Advance Order - # of Copies _____

4b. Payment of Fee(s): (Please first reapply any previously paid issue fee shown above)

- ☐ A check is enclosed.
☐ Payment by credit card. Form PTO-2038 is attached.
☐ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number _____ (enclose an extra copy of this form).

5. Change in Entity Status (from status indicated above)

- ☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. ☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature _____ Date _____
 Typed or printed name _____ Registration No. _____

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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7590 05/22/2009			EXAMINER	
Stephen M Haracz Bryan Cave 1290 Avenue of the Americas New York, NY 10104-3300			CHOWDHURY, IQBAL HOSSAIN	
			ART UNIT	PAPER NUMBER
			1652	
DATE MAILED: 05/22/2009				

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) (application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 0 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 0 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

Notice of Allowability**Application No.**

10/528,845

Applicant(s)

HOSHINO ET AL.

Examiner

IQBAL H. CHOWDHURY

Art Unit

1652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 2/27/2009.
2. ☒ The allowed claim(s) is/are 1 and 4-18.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
(b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

DETAILED ACTION

Application Status

Claims 1 and 3-18 are currently pending in this application.

In response to a previous Office action, a non-final action (mailed on August 22, 2008), Applicants filed an amendment on February 27, 2009, amending claims 1, 4 and 14, and adding new claims 16-18 is acknowledged. Claims 3, 8, 12-13 remain withdrawn as encompassing non-elected inventions.

Claims 1, 4-7, 9-11 and 14-15 are under consideration.

Election/Restriction

Claims 1, 4-7, 9-11 and 14-15 are directed to an allowable product. Pursuant to the procedures set forth in MPEP § 821.04(b), claims 8, 12-13 and 16-18 are directed to the process of using the allowable product, previously withdrawn from consideration as a result of a restriction requirement, mailed on 10/23/2006 is hereby rejoined and fully examined for patentability under 37 CFR 1.104. Claim 3 is directed to the invention(s) II not requiring all the limitations of the allowable product claim, have NOT been rejoined.

Because a claimed invention previously withdrawn from consideration under 37 CFR 1.142 has been rejoined, **the restriction requirement of groups I and III (claims 1, 4-7, 9-11 and 14-15 and 8, 12-13 and 16-18 as set forth in the Office action mailed on 10/23/2006 is hereby withdrawn.** In view of the withdrawal of the restriction requirement as to the rejoined inventions, applicant(s) are advised that if any

claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Jihong Zang, applicants' representative on May 12, and 19, 2009.

Amend claims as shown below:

Claim 1 A vector or plasmid comprising an isolated DNA encoding vitamin B6 phosphate phosphatase selected from the group consisting of:

(a) the DNA sequence of SEQ ID NO:9;

(b) a DNA sequence encoding a polypeptide having vitamin B6 phosphate phosphatase activity, which hybridizes under stringent hybridization and stringent washing conditions to the complementary DNA sequence

defined in (a) wherein the stringent hybridization and stringent washing conditions comprise hybridizing in 5xSSC, 0.3% SDS, 2% blocking reagent, 0.1% N-lauroylsarcosine, 50% formamide overnight at 42°C and washing twice in 2xSSC, 0.1% SDS at room temperature for 5 minutes and then washing twice in 0.1xSSC, 0.1% SDS at 68°C for 15 minutes;

(c) a DNA sequence encoding a polypeptide having vitamin B6 phosphate phosphatase activity, wherein said polypeptide is at least 90% identical to the amino acid sequence of SEQ ID NO:10; and

(d) a DNA sequence encoding a polypeptide having vitamin B6 phosphate phosphatase activity and is at least 90% identical to the DNA sequence of SEQ ID NO:9; and

~~(e) a degenerate DNA sequence of any one of (a) to (c).~~

Claim 4 A recombinant microorganism of the genus *Sinorhizobium* or *Escherichia*, capable of producing vitamin B6 from vitamin B6 phosphate, wherein said microorganism is transformed with a DNA encoding vitamin B6 phosphate phosphatase selected from the group consisting of:

(a) the DNA sequence of SEQ ID NO:9;

(b) a DNA sequence encoding a polypeptide having vitamin B6 phosphate phosphatase activity, which hybridizes under stringent hybridization and stringent washing conditions to the complementary DNA sequence

defined in (a), wherein the stringent hybridization and stringent washing conditions comprise hybridizing in 5xSSC, 0.3% SDS, 2% blocking reagent, 0.1% N-lauroylsarcosine, 50% formamide overnight at 42°C and washing twice in 2xSSC, 0.1% SDS at room temperature for 5 minutes and then washing twice in 0.1xSSC, 0.1% SDS at 68°C for 15 minutes;

(c) a DNA sequence encoding a polypeptide having vitamin B6 phosphate phosphatase activity, wherein said polypeptide is at least 90% identical to the amino acid sequence of SEQ ID NO:10; and

(d) a DNA sequence encoding a polypeptide having vitamin B6 phosphate phosphatase activity and is at least 90% identical to the DNA sequence of SEQ ID NO:9; and

~~(e) a degenerate DNA sequence of any one of (a) to (c).~~

Claim 12 The process according to claim 8, wherein said microorganism is *Sinorhizobium meliloti* IFO 14782 having pVKPtacpdxP (*S. meliloti* S-*meliloti* IFO 14782/pvVKPtaccpdxP).

Claim 13 The process according to claim 8, wherein said microorganism is *Escherichia coli* *Escherichia coli* JM109 having pKKpdxP (*E. coli* *E. coli* JM 109/pKKpdxP).

Cancel claim 3.

Allowable Subject Matter

Claims 1 and 4-18 are allowed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Iqbal Chowdhury, whose telephone number is (571) 272-8137. The examiner can normally be reached on Monday-Friday from 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nashaat T. Nashed, can be reached at (571) 272-0934.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Iqbal Chowdhury, Patent Examiner
Art Unit 1652

/Nashaat T. Nashed/
Supervisory Patent Examiner, Art Unit 1652